

## NOTICE OF DECISION

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**Case File:** T2-2020-13144

**Permit:** Verification and Alteration of a Non-Conforming Use

**Applicants:** Emily Hess                      **Owners:** Elisiva Weilert and Lawrence Huang

**Location:** 26312 NW St. Helens Road, Scappoose  
Tax Lot 200, Section 25D, Township 3 North, Range 2 West, W.M.  
Tax Account #R982250120                      Property ID #R326146

**Base Zone:** Multiple Use Agriculture (MUA-20)

**Overlays:** Willamette River Greenway (WRG) and Flood Hazard (FH)

**Proposal Summary:** Verification of a Nonconforming Use for a sanitary landfill use that was once known as the Hawk's Burning Site. Upon verification, the applicant is proposing an Alteration of the Nonconforming Use, which will result in the excavation of soil, remediation, and capping of the sanitary landfill with new imported soil.

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**Decision:**     **Approved with Conditions**

**This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Tuesday, October 20, 2020 at 4:00 pm.**

**Opportunity to Review the Record:** The complete case file, including the Planning Director Decision containing Findings, Conclusions, Conditions of Approval, and all evidence associated with this application is available by contacting the staff planner listed below. Copies of all documents are available at the rate of \$0.35/per page. For further information, contact Rithy Khut, Staff Planner at 503-988-0176 or at [rithy.khut@multco.us](mailto:rithy.khut@multco.us)

**Opportunity to Appeal:** An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning office at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision is not appealable to the Land Use Board of Appeals until all local appeals are exhausted.

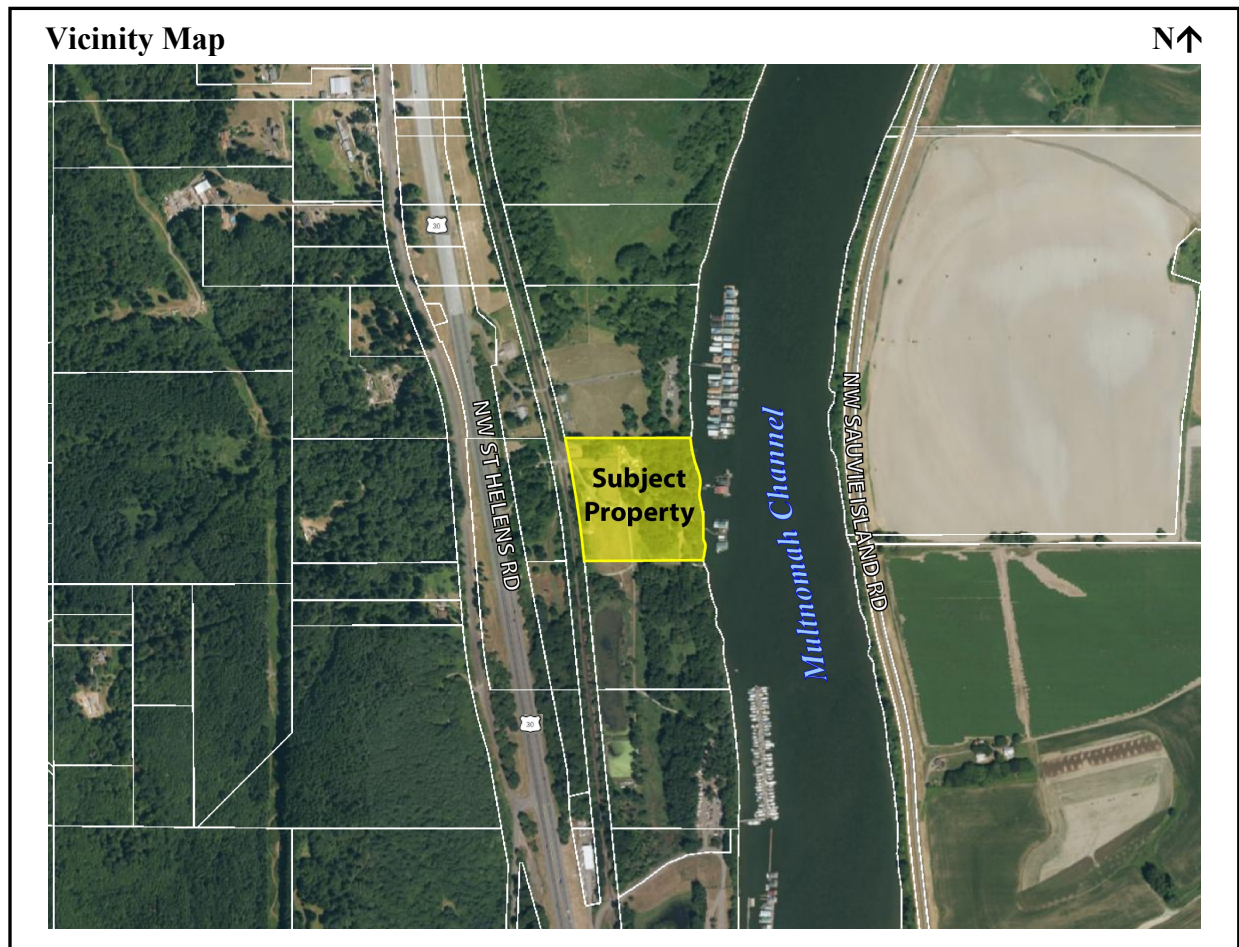
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**Issued by:** \_\_\_\_\_

**By:**             Rithy Khut, Planner

**For:**           Carol Johnson, AICP  
                    Planning Director

**Date:**           Tuesday, October 6, 2020



**Applicable Approval Criteria:**

**For this application to be approved, the proposal will need to meet applicable approval criteria below:**

**Multnomah County Code (MCC):** Violations, Enforcement and Fines: MCC 39.1515 Code Compliance and Applications

Definitions: MCC 39.2000 Definitions

Lot of Record: MCC 39.3005 Lot of Record – Generally, MCC 39.3080 Lot of Record – Multiple Use Agriculture-20 (MUA-20)

Multiple Use Agriculture (MUA-20): MCC 39.4325 Dimensional Requirements and Development Standards

Willamette River Greenway (WRG): MCC 39.5910 Uses – Greenway Permit Required, MCC 39.5920 Exceptions

Nonconforming Uses: MCC 39.8305 Verification of Nonconforming Use Status, MCC 3815 Alteration, Expansion or Replacement of Nonconforming Uses

Copies of the referenced Multnomah County Code sections are available by contacting our office at (503) 988-3043 or by visiting our website at <https://multco.us/landuse/zoning-codes/> under the link: **Chapter 39 - Zoning Code**

## **Conditions of Approval**

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.

1. Permit Expiration – This land use permit shall expire as follows:

- a. For a use or development that does not include a structure shall expire two (2) years after the date of the final decision, unless the use or development was established according to all specifications and conditions of approval in the land use approval. [MCC 39.1185(A)]
  - i. For the purposes of 1.a, expiration of an approval means that a new application is required for uses that are not established during the approval period.

**Note:** The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 39.1195, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period.

2. Prior to land use sign-off for building plan check, the property owners or their representative shall:

- a. Record pages 1 through 4 and Exhibit A.17 – Sheet C1.0 of this Notice of Decision with the County Recorder. The documents shall be reduced to 8.5” x 11” for recording purposes. The Notice of Decision shall run with the land. Proof of recording shall be made prior to the issuance of any permits and shall be filed with the Land Use Planning Division. Recording shall be at the applicant’s expense. [MCC 39.1175]

3. As an on-going condition, the property owner(s) or their representative(s) shall:

- a. Ensure that the sanitary landfill, previously known as Hawk’s Burning Site shall be limited to two acres as shown on the site plan Exhibited as A.17 – Sheet C1.0. At no point in the future may the subject property accept solid waste unless authorized by a new application for a Community Service Use permit. [MCC 39.8305(A), (B), and (D)]

**Note:** Once this decision is final, application for building permits may be made with the City of Portland, if required. When ready to have building permits signed off by land use planning, the applicant shall complete the following steps:

1. Read your land use decision, the conditions of approval and modify your plans, if necessary, to meet any condition that states, “Prior to land use sign-off for building plan check...” Be ready to demonstrate compliance with the conditions.

2. Contact the City of Portland, Bureau of Development Services, On-site Sanitation at 503-823-6892 or e-mail *septic@portlandoregon.gov* for information on how to complete the Septic Evaluation or Permit process for the proposed development. All existing and/or proposed septic system components (including septic tank and drainfield) must be accurately shown on the site plan.
3. Contact Rithy Khut, Planner, at 503-988-0176 or *rithy.khut@multco.us*, **for an appointment** for review of the conditions of approval and to sign the building permit plans. Please ensure that any items required under, “At the time of land use sign-off for building plan check...” are ready for land use planning review. Land Use Planning must sign off on the plans and authorize the building permit before you can go to the Building Department.

The above must be completed before the applicant can obtain building permits from the City of Portland, if required. Five (5) sets each of the site plan and building plans are needed for building permit sign off. At the time of building permit review, Land Use Planning may collect additional fees, including an erosion control inspection fee, if applicable.

**Notice to Mortgagee, Lien Holder, Vendor, or Seller:**

ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.

## **Findings of Fact**

**FINDINGS:** Written findings are contained herein. The Multnomah County Code (MCC) criteria and Comprehensive Plan Policies are in **bold** font. Staff analysis and comments are identified as ‘**Staff:**’ and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

### **1.0 Project Description:**

**Staff:** The applicant requests a Verification of a Nonconforming Use for a sanitary landfill use that was once known as the Hawk’s Burning Site. Upon verification, the applicant is proposing an Alteration of the Nonconforming Use, which will result in the excavation of soil, remediation, and capping of the sanitary landfill with new imported soil.

### **2.0 Property Description & History:**

**Staff:** The subject application is for 26312 NW St. Helens Road, Scappoose (“subject property”) also known as tax lot 200, Section 25D, Township 3 North, Range 2 West, W.M. The subject property is located on the east side of NW St. Helens Road, which is also known as U.S Highway 30, within the Multiple Use Agriculture – 20 (MUA-20) zoning district in the Sauvie Island and the Multnomah Channel rural area. There are multiple environmental overlays on the subject property including the Willamette River Greenway and Areas of Special Flood Hazard (FH).

Multnomah County Division of Assessment, Recording, and Taxation (DART) records indicate that the subject property is approximately 10.72 acres and is owned by the Elisiva Weilert and Lawrence Huang (Exhibit B.1). DART records also indicate that the subject property contains a manufactured home (“single-family dwelling”) that was first assessed in 1975 and a farm building. Aerial photo review from 2019 confirms the presence of the single-family dwelling and farm building (Exhibit B.3). The aerial also shows various structures, which includes:

- Accessory building in the northwest corner of property (appears prior to 1998)
- Farm Building in middle of property (appears prior to 1998)
- Manufactured home (single-family dwelling) – (Appears between 1998 and 2002)
- Miscellaneous structures on northern portion of property (Appears between 2008 and 2010)

Reviewing the history of past permits of the subject property, the property has had an extensive permit history. Below are the land use, building permits, and code compliance cases that are on record:

<b>Case #</b>	<b>Date of Decision</b>	<b>Description</b>	<b>Decision</b>
BA 112-60	December 1, 1960	Temporary Permit for Commercial Burning Site	Approved
BA 28-62	March 1, 1962	Temporary Permit for Commercial Burning Site	Approved
BA 48-63	March 28, 1963	Temporary Permit for Commercial Burning Site	Approved
BA 7-64	January 30, 1964	Temporary Permit for Commercial Burning Site	Approved

<b>Case #</b>	<b>Date of Decision</b>	<b>Description</b>	<b>Decision</b>
BA 25-65	January 28, 1965	Temporary Permit for Commercial Burning Site	Approved
BA 34-66	March 24, 1966	Temporary Permit for Commercial Burning Site	Approved
BA 34-67	May 15, 1967	Temporary Permit for Commercial Burning Site	Approved
BA 281-67	January 16, 1968	Temporary Permit for Commercial Burning Site	Approved
CS 26-68	September 17, 1968	Land fill operation	Approved
WRG 3-99	February 25, 1999	Willamette River Greenway permit for a single-family mobile home	Withdrawn
UR-01-011		Non-permitted houseboat moorage and RV park; non-permitted manufactured home and buildings; possible solid waste/sanitation violations.	Active
T2-01-091	August 23, 2002	Willamette River Greenway permit for a manufactured dwelling	Denied
T3-2011-1895	February 22, 2012	Request to establish a houseboat moorage and other upland structures	Withdrawn
T1-2011-1896	February 22, 2012	Grading and Erosion Control permit and Flood Development permit to establish a houseboat moorage and other upland structures	Withdrawn
T2-2012-2153	March 05, 2013	Policy 10 Determination for Moorage (Approved) and Nonconforming use determination for single-family dwelling and assessor buildings (Denied)	Approved / Denied
T2-2013-2907	May 30, 2014	Willamette River Greenway permit for moorage and associated upland development	Denied
T1-2013-2908	March 13, 2018	Flood Development permit for moorage and upland development	Withdrawn
T2-2015-4483	June 23, 2016	Willamette River Greenway permit for existing development	Approved
T3-2015-4484	October 01, 2015	Conditional Use permit for expansion of Marina	Withdrawn
T3-2015-4572	October 01, 2015	Community Service Conditional Use for new Marina	Withdrawn
T1-2017-8500	March 29, 2019	Marijuana Business Registration	Withdrawn

### **3.0 Public Comment**

**Staff:** A mailed notice of application and invitation to comment on the proposed application was sent to the required parties as required by MCC 39.1105. The Opportunity to Comment is exhibited as C.4. Staff received the following public comment during the 14-day comment period.

#### **3.1 Eric Jensen, houseboat owner located at 26396 NW St. Helens Road, provided comments via e-mail comments on September 4, 2020 (Exhibit D.1)**

**Comment:** Eric provided concerns about the impact of flooding on the property and if a flood were to occur the release of toxics buried on the site entering the Columbia River.

**Staff:** As discussed in the applicant's narrative and the modification of a nonconforming use, the applicant is proposing to excavate soil, remediate contamination at the sanitary landfill, and ultimately place a new cap on top of the sanitary landfill with new imported soil. These actions are required by the Oregon Department of Environmental Quality to ensure that the solid waste on the site does not pose a health hazard to the environment.

### **4.0 Code Compliance and Applications Criteria:**

#### **4.1 § 39.1515 CODE COMPLIANCE AND APPLICATIONS.**

**Except as provided in subsection (A), the County shall not make a land use decision approving development, including land divisions and property line adjustments, or issue a building permit for any property that is not in full compliance with all applicable provisions of the Multnomah County Zoning Code and/or any permit approvals previously issued by the County.**

**(A) A permit or other approval, including building permit applications, may be authorized if:**

- (1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Zoning Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or**
- (2) It is necessary to protect public safety; or**
- (3) It is for work related to and within a valid easement over, on or under an affected property.**

**(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.**

**Staff:** There is one active code compliance case associated with this property. The case, UR-01-011 was opened on March 1, 2001 to resolve an issue regarding a non-permitted houseboat moorage, RV park, manufactured home and other associated buildings and possible solid

waste/sanitation violations within the Willamette River Greenway (WRG) overlay area and within an Area of Special Flood Hazard (FH).

In order to make a land use decision approving development, the applicant will have to bring the property into full compliance. Alternatively, if the development is necessary to protect public safety or is work related to and within a valid easement over, on, or under an affected property, the County can also make a land use decision without addressing the code compliance issues on the property.

As proposed, the applicant will conduct development activities, which include the excavation of soil, remediation of contaminated soil, and capping of a sanitary landfill with new imported soil. This development relates to the sanitary landfill use that was once known as the Hawk's Burning Site. Working under contract with the Oregon Department of Environmental Quality (DEQ), the applicant's scope of work is to, "ensure that the landfill has a sufficiently thick soil cover to reduce the risk of human exposure to underlying waste" (Exhibit A.16). The development actions will abate the conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public.

This permit will not address or resolve the active code compliance case or any other potential compliance issues associated with the property as the applicant is utilizing the provisions of MCC 39.1515(A)(2) to authorize the development activities.

*The County is able to make a land use decision approving development that is necessary to protect the public safety. The proposed work is required by DEQ due to potential health risks. This permit may be approved to resolve a public safety issue.*

## **5.0 Lot of Record Criteria**

### **5.1 § 39.3005- LOT OF RECORD – GENERALLY.**

**(A) An area of land is a "Lot of Record" if it meets the standards in Subsection (B) of this Section and meets the standards set forth in this Part for the Zoning District in which the area of land is located.**

**(B) A Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, either satisfied all applicable zoning laws and satisfied all applicable land division laws, or complies with the criteria for the creation of new lots or parcels described in MCC 39.9700. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.**

**(a) "Satisfied all applicable zoning laws" shall mean: the parcel, lot, or group thereof was created and, if applicable, reconfigured in full compliance with all zoning minimum lot size, dimensional standards, and access requirements.**

**Staff:** The subject property was previously found to be a Lot of Record in land use case, T2-2012-2153. On appeal, the Hearings Officer found,

"In 1882, Northern Pacific Railroad Company acquired a parcel of land for railroad purposes. This parcel divided land located on the east side of the railroad parcel from land on the west side of the parcel. Tax Lot 200 is located east of the railroad parcel. ... The railroad deed was recorded in 1883.



In 1915, a deed conveyed a parcel of land comprised of property currently known as Tax Lot 200, 700, 1000, and 1400. This deed was recorded at Book 908, page 453 of the County Clerk's records in 1923. This conveyance created two lots of record: one comprised of Tax Lot 200 and the other comprised of Tax Lot 700, 100 and 1400." (Exhibit B.5)

As discussed above by the Hearings Officer, tax lot 200, the subject property, was created in 1923. At that time in 1923, the County had not yet enacted zoning laws. The first interim zoning ordinance was adopted on May 26, 1953. Therefore, as described in 1923, the subject property satisfied all applicable zoning laws as none existed at that time. *The subject property satisfied all applicable zoning laws.*

**(b) "Satisfied all applicable land division laws" shall mean the parcel or lot was created:**

- 1. By a subdivision plat under the applicable subdivision requirements in effect at the time; or**
- 2. By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or**
- 3. By a deed, or a sales contract dated and signed by the parties to the transaction, that was in recordable form prior to October 19, 1978; or**
- 4. By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and**
- 5. "Satisfied all applicable land division laws" shall also mean that any subsequent boundary reconfiguration completed on or after December 28, 1993 was approved under the property line adjustment provisions of the land division code. (See Date of Creation and Existence for the effect of property line adjustments on qualifying a Lot of Record for the siting of a dwelling in the EFU and CFU districts.)**

**Staff:** As discussed above, the subject property was previously found to be a Lot of Record in land use case, T2-2012-2153. On appeal, the Hearings Officer found that tax lot 200, the subject property, was created in 1923. At that time in 1923, the County had not yet enacted land division laws. The first interim zoning ordinance was adopted on May 26, 1953. Additionally, a deed creating the parcel was recorded prior to October 19, 1978. The deed was recorded in Book 908, Page 453 of the County Clerk's records in 1923. Therefore, as described in 1923, the subject property satisfied all applicable land division laws. *The subject property satisfied all applicable land division laws.*

**(c) Separate Lots of Record shall be recognized and may be partitioned congruent with an "acknowledged unincorporated community" boundary which intersects a Lot of Record.**

- 1. Partitioning of the Lot of Record along the boundary shall require review and approval under the provisions of the land division part of this Chapter, but not be subject to the minimum area and access requirements of this district.**
- 2. An "acknowledged unincorporated community boundary" is one that has been established pursuant to OAR Chapter 660, Division 22.**

**Staff:** The property subject to this land use application is not congruent with an “acknowledged unincorporated community” boundary, which intersects a Lot of Record. Additionally, the applicant is not requesting a partitioning of the Lot of Record along the boundary; therefore, this criterion is not applicable. *This criterion is not applicable.*

**5.2 § 39.3080 LOT OF RECORD – MULTIPLE USE AGRICULTURE-20 (MUA-20).**

**(A) In addition to the standards in MCC 39.3005, for the purposes of the MUA-20 district the significant dates and ordinances for verifying zoning compliance may include, but are not limited to, the following:**

- (1) July 10, 1958, SR zone applied;**
- (2) July 10, 1958, F-2 zone applied;**
- (3) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;**
- (4) October 6, 1977, MUA-20 zone applied, Ord. 148 & 149;**
- (5) October 13, 1983, zone change from EFU to MUA-20 for some properties, Ord. 395;**
- (6) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997.**

**Staff:** The code section above does not affect the determination of this case as the significant dates and ordinances are for informational purposes. *This criterion is not applicable.*

**(B) A Lot of Record which has less than the minimum lot size for new parcels or lots, less than the front lot line minimums required, or which does not meet the access requirement of MCC 39.4345, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.**

**Staff:** The Lot of Record is approximately 10.72 acres. The minimum lot size to create a new parcel in the MUA-20 zone is 20 acres. The MUA-20 zone has a required 50-foot Front Lot Line length for the creation of new parcels or lots. The front lot line of the subject property fronts onto a railroad. As the subject property is less than the minimum lot size for a new parcel or lot, and does not meet the access requirement of MCC 39.4345, but was found to be a Lot of Record in findings 5.01, it may be occupied by any allowed, review or conditional use provided the Lot of Record is in compliance with other requirements of the MUA-20 district. *This criterion is met.*

**(C) Except as otherwise provided by MCC 39.4330, 39.4335, and 39.5300 through 39.5350, no sale or conveyance of any portion of a lot other than for a public purpose shall leave a structure on the remainder of the lot with less than minimum lot or yard requirements or result in a lot with less than the area or width requirements of this district.**

**Staff:** The applicant is not proposing the sale or conveyance of any portion of a lot; therefore, Criterion (C) does not affect the determination on this case and is not applicable. *This criterion is not applicable.*

**(D) The following shall not be deemed to be a Lot of Record:**

- (1) An area of land described as a tax lot solely for assessment and taxation purposes;**
- (2) An area of land created by the foreclosure of a security interest.**
- (3) An area of land created by court decree.**

**Staff:** As discussed above, the subject property is a Lot of Record. As a Lot of Record, the subject property is not an area of land described as a tax lot solely for assessment and taxation purposes, nor is it an area of land created by foreclosure of a security interest, or an area of land created by court decree. *These criteria are met.*

## **6.0 Multiple Use Agriculture (MUA-20) Criteria**

### **6.1 § 39.4325 DIMENSIONAL REQUIREMENTS AND DEVELOPMENT STANDARDS.**

**All development proposed in this base zone shall comply with the applicable provisions of this section.**

**Staff:** The subject application is for a verification/alteration of a nonconforming use. The alteration of the nonconforming use (a sanitary landfill) will result in development that includes excavation of soil, remediation work, and capping of the sanitary landfill with new imported soil. As such, the proposed development shall comply with all applicable provisions of this section.

**(A) Except as provided in MCC 39.3080, 39.4330, 39.4335 and 39.5300 through 39.5350, the minimum lot size for new parcels or lots shall be 20 acres.**

**(B) That portion of a street which would accrue to an adjacent lot if the street were vacated shall be included in calculating the area of such lot.**

**Staff:** The application is not for the creation of a new parcel or lot. As such, the criteria above do not affect the determination of this case and are not applicable. *These criteria are not applicable.*

#### **(C) Minimum Yard Dimensions – Feet**

<b>Front</b>	<b>Side</b>	<b>Street Side</b>	<b>Rear</b>
<b>30</b>	<b>10</b>	<b>30</b>	<b>30</b>

**Maximum Structure Height – 35 feet**

**Minimum Front Lot Line Length – 50 feet.**

**(1) Notwithstanding the Minimum Yard Dimensions, but subject to all other applicable Code provisions, a fence or retaining wall may be located in a Yard, provided that a fence or retaining wall over six feet in height shall be setback from all Lot Lines a distance at least equal to the height of such fence or retaining wall.**

**(2) An Accessory Structure may encroach up to 40 percent into any required Yard subject to the following:**

**(a) The Yard being modified is not contiguous to a road.**

**(b) The Accessory Structure does not exceed five feet in height or exceed a footprint of ten square feet, and**

**(c) The applicant demonstrates the proposal complies with the fire code as administered by the applicable fire service agency.**

**(3) A Variance is required for any Accessory Structure that encroaches more than 40 percent into any required Yard.**

**(D) The minimum yard requirement shall be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The county Road Official shall determine the necessary right-of-way widths based upon the county “Design and Construction Manual” and the Planning Director shall determine any additional yard requirements in consultation with the Road Official.**

**Staff:** The subject application is for a verification and alteration of a nonconforming use. The alteration of the nonconforming use (a sanitary landfill) will result in development that includes excavation of soil, remediation work, and capping of the sanitary landfill with new imported soil. As such, the proposed development does not include buildings or structures that are required to meet minimum yard dimensions or maximum structure height. Further, as discussed in Section 4.0, this Decision only addresses the proposed remediation of the sanitary landfill site and is not reviewing buildings, structures, or uses that are subject to the open code compliance case or have not been reviewed by the County since the opening of the code compliance case. Lastly, as the applicant is not proposing to create a new lot, the minimum front lot line length provision is not applicable. *These criteria are not applicable.*

**(E) Structures such as barns, silos, windmills, antennae, chimneys or similar structures may exceed the height requirement if located at least 30 feet from any property line.**

**Staff:** The applicant is not proposing structures such as barns, silos, windmills, antennae, chimneys or similar structures; therefore, this criterion is not applicable. *This criterion is not applicable.*

**(F) Agricultural structures and equine facilities such as barns, stables, silos, farm equipment sheds, greenhouses or similar structures that do not exceed the maximum height requirement may have a reduced minimum rear yard of less than 30 feet, to a minimum of 10 feet, if:**

**(1) The structure is located at least 60 feet from any existing dwelling, other than the dwelling(s) on the same tract, where the rear property line is also the rear property line of the adjacent tract, or**

**(2) The structure is located at least 40 feet from any existing dwelling, other than the dwelling(s) on the same tract, where the rear property line is also the side property line of the adjacent tract.**

**(3) Placement of an agricultural related structure under these provisions in (F) does not change the minimum yard requirements for future dwellings on adjacent property.**

**Staff:** The applicant is not proposing agricultural structures and equine facilities such as barns, stables, silos, farm equipment sheds, greenhouses or similar structures; therefore, these criteria are not applicable. *These criteria are not applicable.*

**(G) On-site sewage disposal, storm water/drainage control, water systems unless these services are provided by public or community source, required parking, and yard areas shall be provided on the lot.**

**(1) Sewage and stormwater disposal systems for existing development may be off-site in easement areas reserved for that purpose.**

**(2) Stormwater/drainage control systems are required for new impervious surfaces. The system shall be adequate to ensure that the rate of runoff from the lot for the 10 year 24-hour storm event is no greater than that before the development.**

**Staff:** As required on-site sewage disposal, storm water/drainage control, water systems unless these services are provided by public or community source, required parking, and yard areas shall be provided on the lot. The applicant has included a Septic Review Certification that was reviewed and approved by Lindsey Reschke, Multnomah County Sanitarian (Exhibit A.15). The Storm Water Certificate indicates that natural filtration will be utilized to ensure that the rate of runoff from the subject property for the 10-year/24-hour storm event is no greater than that before the development. The Storm Water Certificate was completed by Jacob M. Faust, Registered Professional Engineer (Exhibit A.8). *These criteria are met.*

**(H) New, replacement, or expansion of existing dwellings shall minimize impacts to existing farm uses on adjacent land (contiguous or across the street) by:**

**(1) Recording a covenant that implements the provisions of the Oregon Right to Farm Law in ORS 30.936 where the farm use is on land in the EFU zone; or**

**(2) Where the farm use does not occur on land in the EFU zone, the owner shall record a covenant that states he recognizes and accepts that farm activities including tilling, spraying, harvesting, and farm management activities during irregular times, occur on adjacent property and in the general area.**

**Staff:** The applicant is not proposing a new, replacement, or expansion of existing dwellings; therefore, these criteria are not applicable. *These criteria are not applicable.*

**(I) Required parking, and yard areas shall be provided on the same Lot of Record as the development being served.**

**Staff:** The development proposed as part of the verification and alteration of a nonconforming use does not require parking and yard areas. As shown on the site plan, exhibited as Exhibit A.17 – Sheet C1.0, no parking areas are proposed nor any buildings or structures. *This criterion is not applicable.*

**(J) All exterior lighting shall comply with MCC 39.6850.**

**Staff:** The applicant is not proposing any new lighting and the proposed development does not meet the threshold required to bring all exterior lighting into compliance with MCC 39.6850. As required by MCC 39.6850(C) no building is being enlarged by more than 400 square feet of ground coverage therefore this criterion is not applicable. *This criterion is not applicable.*

## **7.0 Willamette River Greenway (WRG) Criteria**

### **7.1 § 39.5910 USES - GREENWAY PERMIT REQUIRED.**

**All uses allowed in the base zone are allowed in the WRG when found to satisfy the applicable approval criteria given in such zone and, except as provided in MCC 39.5920, subject to approval of a WRG permit pursuant to this Subpart.**

**Staff:** The proposed alteration of the nonconforming use, which will result in the excavation of soil, remediation of soil, and capping of a sanitary landfill with new imported soil, is not required to obtain a Greenway Permit. As provided in MCC 39.5920(K):

**(K) Uses legally existing on October 6, 1977, the effective date of Ordinance 148; provided, however, that any change or intensification of such use shall require a Greenway Permit.**

The subject property does contain a use, a sanitary landfill that legally existed on October 6, 1977. The sanitary landfill was permitted under land use case CS 26-68 on September 17, 1968. Although the sanitary landfill does not accept landfill materials, the disposal site is still located on the site buried under a soil cap. Additionally, the proposed alteration of the sanitary landfill does not result in a change or intensification. As defined in MCC 39.5915, a change of use is:

**Change of use - means making a different use of the land or water than that which existed on December 6, 1975. It includes a change which requires construction, alterations of the land, water or other areas outside of existing buildings or structures and which substantially alters or affects the land or water. It does not include a change of use of a building or other structure which does not substantially alter or affect the land or water upon which it is situated. Change of use shall not include the completion of a structure for which a valid permit has been issued as of December 6, 1975 and under which permit substantial construction has been undertaken by July 1, 1976. The sale of property is not in itself considered to be a change of use. An existing open storage area shall be considered to be the same as a building. Landscaping, construction of driveways, modifications of existing structures, or the construction or placement of such subsidiary structures or facilities as are usual and necessary to the use and enjoyment of existing improvements shall not be considered a change of use for purposes of this order.**

As proposed, the applicant is not making a different use of the land than that which existed on December 6, 1975, nor will the land be altered in a way, which substantially alters or affects the land. The proposed development will primarily remediate the landfill by removing and then adding soil to the existing cap that sits over the debris and rubbish that make up the landfill. The height of the finished remediation project will be the same as currently existing. No visual change will occur to the landfill site.

This development will not result in the intensification of a use. As defined in MCC 39.5915, Intensification is:

**Intensification - means any additions which increase or expand the area or amount of an existing use, or the level of activity. Remodeling of the exterior of a structure not excluded below is an intensification when it will substantially alter the appearance of the structure. Intensification shall not include the completion of a**

structure for which a valid permit has been issued as of December 6, 1975 and under which permit substantial construction has been undertaken by July 1, 1976. Maintenance and repair usual and necessary for the continuance of an existing use is not an intensification of use. Reasonable emergency procedures necessary for the safety or protection of property are not an intensification of use. Residential use of land within the Greenway includes the practices and activities customarily related to the use and enjoyment of one's home. Landscaping, construction of driveways, modification of existing structures, or construction or placement of such subsidiary structures or facilities adjacent to the residence as are usual and necessary to such use and enjoyment shall not be considered an intensification for the purposes of this order. Seasonal increases in gravel operations shall not be considered an intensification of use.

As proposed, the applicant will not increase or expand the area of the existing sanitary landfill use. As shown on the site plan, the boundaries of the sanitary landfill have been determined (Exhibit A.17 – Sheet C1.0). The proposed development will not expand past those boundaries. The height of the finished remediation project will be the same as currently existing. No visual change or intensification will occur to the landfill site.

*As proposed, the development is exempt from acquiring a Willamette River Greenway permit.*

## **8.0 Nonconforming Uses Criteria**

### **8.1 § 39.8305 VERIFICATION OF NONCONFORMING USE STATUS.**

**(A) The Planning Director shall verify the status of a nonconforming use upon application for a determination by an owner on application for any land use or other permit for the site, or on finding there is a need for a determination (e.g., on learning of a possible Code violation). The determination shall be based on findings that the use:**

- (1) Was legally established and operating at the time of enactment or amendment of this Zoning Code, and**
- (2) Has not been abandoned or interrupted for a continuous two year period.**

**Staff:** As defined in MCC 39.2000, a nonconforming use is:

**Nonconforming Use – A legally established use, structure or physical improvement in existence at the time of enactment or amendment of the Zoning Code but not presently in compliance with the use regulations of the base zone. A use approved under criteria that have been modified or are no longer in effect is considered nonconforming.**

The subject property contains a use, a sanitary landfill that was legally established and operating at the time of enactment or amendment of zoning code, but not presently in compliance with the use regulations of the base zone. The use was also approved under criteria that have been modified and are no longer in effect. The sanitary landfill was approved and permitted on September 17, 1968, under land use case CS 26-68. At that time, the zoning applied to the property was F-2 (agricultural) and required a Community Service designation (Exhibit B.5 and B.6). Since that time, the zoning applied to the property is now Multiple Use

Agriculture – 20 (MUA-20). Although a sanitary landfill is a use that can be permitted under a Community Service designation in the MUA-20 zoning district, the criteria for approval have been modified and are no longer in effect.

At this time, the sanitary landfill does not accept solid waste materials. The sanitary landfill stopped receiving rubbish, refuse, and solid waste materials in the early 1970s; although approximately two acres of material are located on the site, buried under a soil cap (Exhibit A.16). As the sanitary landfill is not accepting new solid waste, the use has been reduced to storage only of the remaining solid waste materials. However a condition will be required that limits the sanitary landfill use to two acres and prohibits the acceptance of new solid waste to the subject property. *As conditioned, this criterion is met.*

**(B) The Planning Director shall verify the status of a nonconforming use as being the nature and extent of the use at the time of adoption or amendment of the Zoning Code provision disallowing the use. When determining the nature and extent of a nonconforming use, the Planning Director shall consider:**

- (1) Description of the use;**
- (2) The types and quantities of goods or services provided and activities conducted;**
- (3) The scope of the use (volume, intensity, frequency, etc.), including fluctuations in the level of activity;**
- (4) The number, location and size of physical improvements associated with the use;**
- (5) The amount of land devoted to the use; and**
- (6) Other factors the Planning Director may determine appropriate to identify the nature and extent of the particular use.**
- (7) A reduction of scope or intensity of any part of the use as determined under this subsection (B) for a period of two years or more creates a presumption that there is no right to resume the use above the reduced level. Nonconforming use status is limited to the greatest level of use that has been consistently maintained since the use became nonconforming. The presumption may be rebutted by substantial evidentiary proof that the long-term fluctuations are inherent in the type of use being considered.**

**Staff:** In verifying the status of a nonconforming use, the nature and extent of the use must be determined. The sanitary landfill use was originally reviewed under land use case CS 26-68 and permitted on September 17, 1968. The applicant provided information from the Oregon Department of Environmental Quality (DEQ), that stated, “The landfill reportedly operated from approximately 1960 until the early 1970s, and received rubbish, demolition construction wastes, street sweepings, and brush and stumps. It accepted 93,600-115,000 tons of waste per year and disposed of those wastes by landfilling and burning. Based on the historical data and site investigation work conducted in 2017, the Site covers approximately two acres” (Exhibit A.16).

The sanitary landfill stopped accepting solid waste in the early 1970s. Although the sanitary landfill does not accept landfill materials the disposal site is still exists buried under a soil cap. Therefore, the sanitary landfill is still being used for the storage of solid waste materials. Actual day-to-day operation of the sanitary landfill has ceased. The use is limited to maintenance to ensure that the sanitary landfill does not become a public nuisance or endanger the public.



*As discussed, the sanitary landfill has been reduced in scope and intensity due to its closure as a sanitary landfill accepting solid waste. The nonconforming use is thereby limited to storage of waste materials in two acres as shown in the applicant's site plan. The scope of the use is limited to the extent that solid waste is still located on the subject property under a soil cap. No new solid waste can be accepted in the future. As conditioned, this criterion is met.*

**(C) In determining the status of a nonconforming use, the Planning Director shall determine that, at the time of enactment or amendment of the Zoning Code provision disallowing the use, the nature, scope and intensity of the use, as determined above, was established in compliance with all land use procedures, standards and criteria applicable at that time. A final and effective County decision allowing the use shall be accepted as a rebuttable presumption of such compliance.**

**Staff:** As required above, a determination is needed that at the time of enactment or amendment of the Zoning Code provision disallowing the use, the nature, scope, and intensity of the use was established in compliance with all land use procedures, standards and criteria applicable at that time. As was previously discussed, the sanitary landfill use was originally reviewed under land use case CS 26-68 and permitted on September 17, 1968 (Exhibit B.7). The County's 1968 decision is accepted as a rebuttable presumption of its lawful establishment. The use became nonconforming when the County changed the requirements for obtaining a Community Service approval on September 6, 1977 (Exhibit B.8). The landfill had ceased accepting solid waste by this time and the scope of the nonconforming use is for the continued storage of solid waste in the landfill only. No day-to-day activities occur for the use. *This criterion is met.*

**(D) Except for nonconforming uses considered under MCC 39.8315 (B), the Planning Director may impose conditions to any verification of nonconforming use status to ensure compliance with said verification.**

**Staff:** As discussed in this section, conditions will be required to ensure compliance with this verification required above. *As conditioned, this criterion is met.*

**(E) An applicant may prove the continuity, nature and extent of the nonconforming use only for the 10-year period immediately preceding the date of application. Evidence proving the continuity, nature and extent of the use for the 10-year period preceding application creates a rebuttable presumption that the use, as proven, existed at the time the applicable zoning ordinance or regulation was adopted and has continued uninterrupted until the date of application. Evidence proving the continuity, nature and extent of the use for the 10-year period preceding application does not create a rebuttable presumption that the use lawfully existed at the time the applicable zoning ordinance or regulation was adopted.**

**(F) For purposes of verifying a nonconforming use, the Planning Director shall not require an applicant for verification to prove the existence, continuity, nature and extent of the use for a period exceeding 20 years immediately preceding the date of application. Evidence proving the continuity, nature and extent of the use for the 20-year period preceding application does not create a rebuttable presumption that the use lawfully existed at the time the applicable zoning ordinance or regulation was adopted.**

**Staff:** These criteria outline the timeframe to demonstrate the continuity, nature, and extent of the nonconforming use. As was previously discussed, the sanitary landfill was reviewed and

approved on September 17, 1968. The nature and extent of the nonconforming use since 1977 has been limited to the storage of solid waste that currently exists in the 2-acre landfill area. *This criterion is met.*

**8.2 § 39.8315 ALTERATION, EXPANSION OR REPLACEMENT OF NONCONFORMING USES.**

**(A) Alteration, expansion or replacement of a nonconforming use includes a change in the use, structure, or physical improvement of no greater adverse impact on the neighborhood, or alterations, expansions or replacements required for the use to comply with State or County health or safety requirements.**

**Staff:** The applicant is proposing to alter the sanitary landfill use to comply with State health and safety requirements. As proposed, the applicant will remediate the landfill, which includes the excavation of soil, removal of contaminated soil, and capping of the landfill with new imported soil. Working under contract with the Oregon Department of Environmental Quality (DEQ), the applicant's scope of work is to, "ensure that the landfill has a sufficiently thick soil cover to reduce the risk of human exposure to underlying waste (Exhibit A.16). Their development actions will abate the conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. *This criterion is met.*

**(B) After verification of the status of a nonconforming use pursuant to the applicable provisions of MCC 39.8305, the Planning Director shall authorize alteration of a nonconforming use when it is demonstrated that:**

- (1) The alteration, expansion or replacement is necessary to comply with state or local health or safety requirements, or**
- (2) The alteration is necessary to maintain in good repair the existing structures associated with the nonconformity.**

**Staff:** As discussed in Section 8.1, the status of the use has been verified pursuant to the applicable provisions of MCC 39.8305. As such, the alteration can only be authorized if alteration is necessary to comply with state or local health or safety requirements, or if the alteration is necessary to maintain in good repair the existing structures associated with the nonconformity. As proposed by the applicant and discussed above, the applicant is proposing to alter the sanitary landfill use to comply with State health and safety requirements. Working under contract with the Oregon Department of Environmental Quality (DEQ), the applicant's scope of work is to, "ensure that the landfill has a sufficiently thick soil cover to reduce the risk of human exposure to underlying waste (Exhibit A.16). Their development actions will abate the conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. *This criterion is met.*

**(C) After verification of the status of a nonconforming use pursuant to the applicable provisions of MCC 39.8305, the Planning Director may authorize alteration, expansion or replacement of any nonconforming use when it is found that such alteration, expansion or replacement will not result in a greater adverse impact on the neighborhood. In making this finding, the Planning Director shall consider the factors listed below. Adverse impacts to one of the factors may, but shall not automatically, constitute greater adverse impact on the neighborhood.**

- (1) The character and history of the use and of development in the surrounding area;
- (2) The comparable degree of noise, vibration, dust, odor, fumes, glare or smoke detectable within the neighborhood;
- (3) The comparative numbers and kinds of vehicular trips to the site;
- (4) The comparative amount and nature of outside storage, loading and parking;
- (5) The comparative visual appearance;
- (6) The comparative hours of operation;
- (7) The comparative effect on existing flora;
- (8) The comparative effect on water drainage or quality; and
- (9) Other factors which impact the character or needs of the neighborhood.

**Staff:** The applicant is proposing to alter the sanitary landfill use to comply with State health and safety requirements as allowed in subsection (B) above, therefore is not required to meet the requirements of subsection (C). As such, this criterion is not applicable. *This criterion is not applicable.*

**(D) Any decision on alteration, expansion or replacement of a nonconforming use shall be processed as a Type II permit as described in Part 1 of this Zoning Code.**

**Staff:** The applicant has submitted this application to be processed as a Type II permit as indicated on the General Application form (Exhibit A.1). *This criterion is met.*

## 9.0 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for a Lot of Record Verification and Verification of a Nonconforming Use for a sanitary landfill use in the Multiple Use Agriculture – 20 (MUA-20) zone. The applicant has also carried the burden for an Alteration of said Nonconforming Use. This approval is subject to the conditions of approval established in this report.

## 10.0 Exhibits

- ‘A’ Applicant’s Exhibits
- ‘B’ Staff Exhibits
- ‘C’ Procedural Exhibits
- ‘D’ Comments Received

Exhibits with a “\*” after the exhibit # have been included as part of the mailed decision. All other exhibits are available for review in Case File T2-2020-13144 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	04/01/2020
A.2	5	Project Narrative	04/01/2020

A.3	3	Type 1 and Type 2 Application Forms <ul style="list-style-type: none"> <li>Cover Page</li> <li>Type 1 Application Form</li> <li>General Application Form</li> </ul>	04/01/2020
A.4	3	Scaled Site Plan <ul style="list-style-type: none"> <li>Cover Page</li> <li>Site Plan (reduced to 8.5" x 11")</li> <li>Site Plan (reduced to 11" x 17")</li> </ul>	04/01/2020
A.5	3	Lot of Record Status <ul style="list-style-type: none"> <li>Cover Page</li> <li>Warranty Deed recorded as Instrument #2012-114020 on September 10, 2012</li> </ul>	04/01/2020
A.6	9	Septic Certification <ul style="list-style-type: none"> <li>Cover Page</li> <li>Septic Evaluation Application</li> <li>Septic Review Certification</li> </ul>	04/01/2020
A.7	11	Grading and Erosion Control Permit <ul style="list-style-type: none"> <li>Cover Page</li> <li>Grading and Erosion Control Worksheet</li> </ul>	04/01/2020
A.8	2	Stormwater Drainage Control Certificate	04/01/2020
A.9	12	Transportation Certification <ul style="list-style-type: none"> <li>Cover Page</li> <li>E-mail from Emily Hess (applicant) to Natalie Warner, Multnomah County Transportation Division: Right of Way Permits Program</li> <li>Oregon Department of Transportation – Application Form for State Highway Approach</li> </ul>	04/01/2020
A.10	2	Revised General Application Form and revised Type 1 Application Form with Lawrence Huang's Signature	05/11/2020
A.11	1	Site Plan – Sheet C1.0 (30" x 22")	05/11/2020
A.12	1	Grading Plan and Erosion Control Plan – Sheet C2.0 (30" x 22")	05/11/2020
A.13	3	Applicant Response to Incomplete Letter	06/03/2020
A.14	3	Response to Incomplete Item #1 with revised General Application Form and revised Type 1 Application Form	06/03/2020
A.15	4	Response to Incomplete Item #2 with revised Septic Review Certification	06/03/2020
A.16	10	Response to Incomplete Item #3 with Department of Environmental Quality Task Order and Statement of Work	06/03/2020

A.17*	3	Response to Incomplete Item #4 <ul style="list-style-type: none"> <li>• Response</li> <li>• *Site Plan – Sheet C1.0 (30” x 22”)</li> <li>• *Grading Plan and Erosion Control Plan – Sheet C2.0 (30” x 22”)</li> </ul>	06/03/2020
<b>‘B’</b>	<b>#</b>	<b>Staff Exhibits</b>	<b>Date</b>
B.1	2	Department of Assessment, Records and Taxation (DART): Property Information for 3N2W25D -00200 (R982250120)	04/01/2020
B.2	1	Department of Assessment, Records and Taxation (DART): Map with 3N2W25D -00200 (R982250120) highlighted	04/01/2020
B.3	1	Aerial Photo from Summer 2018	09/03/2020
B.4	21	T2-2012-2153 Hearings Officer Decision	09/03/2020
B.5	1	Zoning Code effective on 05/21/1968 - Agriculture Districts F-2	09/03/2020
B.6	4	Zoning Code effective on 05/21/1968 – Community Service	09/03/2020
B.7	11	Land Use Case #CS 26-68	09/03/2020
B.8	4	Zoning Code effective on 09/06/1977 – Community Service	09/16/2020
<b>‘C’</b>	<b>#</b>	<b>Administration &amp; Procedures</b>	<b>Date</b>
C.1	4	Incomplete letter	05/01/2020
C.2	1	Applicant’s acceptance of 180 day clock	05/12/2020
C.3	1	Complete letter (day 1)	06/09/2020
C.4	5	Opportunity to Comment and mailing list	08/27/2020
C.5	21	Administrative Decision	
<b>‘D’</b>	<b>#</b>	<b>Comments</b>	<b>Date</b>
D.1	2	Eric Jenson (26396 NW St. Helens Road) e-mail comments	09/04/2020